IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 7140 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAJENDRAKUMAR PRABHATSINH PARMAR

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 7140 of 2003

MR JB PARDIWALA for Petitioner No. 1

MR VM PANCHOLI, LD. ADDL.PUBLIC PROSECUTOR for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE A.L.DAVE

Date of decision: 11/09/2003

ORAL JUDGEMENT

Rule. Mr. V.M. Pancholi, learned Additional Public Prosecutor waives service.

2. The applicant came to be arrested by Police in connection with CR No.II-3050 of 2003 registered with Anand Rural Police Station, for offences punishable under Sections 504 and 506(2) of Indian Penal Code. He therefore applied for bail before the Sessions Court, Camping at Anand, by preferring Criminal Misc. Application No. 355 of 2003. The said application came to be allowed b virtue of an order dated 27th August, 2003, passed by the learned Additional Sessions Judge, Kheda, Camping at Anand. While releasing the applicant on bail, a condition was put that bail granted to the applicant would stand automatically cancelled on a written intimation being received by the Investigating Officer from complainant or injured person about breach of any of the conditions imposed by the Court, and the Investigating Officer shall forthwith arrest the applicant. The applicant is aggrieved by imposition of this condition and hence, this application for modification of the order.

3. Learned Advocate Mr. Pardiwala appearing for the applicant submitted that condition No.5 narrated above exposes the applicant the risk of false implication and harassment, since the complainant or victims can make a false application in writing and without verifying the truth in it, by virtue of the above condition, the bail would stand cancelled and the Investigating Officer would be left with no alternative, but to arrest the applicant. He submitted that the condition is therefore harsh and prone to misuse.

4. Learned Additional Public Prosecutor Mr. Pancholi opposes to this application. According to him, Court has imposed this condition in exercise of judicial discretion and in facts of the case and therefore it may not be interfered with.

5. Having regard to the rival side contentions raised before this Court, it is very clear that by imposition of condition No.5, the Court has left no discretion or scope for any enquiry or satisfaction of either the Investigating Officer or any judicial authority to ascertain truthfulness of the allegation or intimation of violation of any of the conditions that may be made in writing to the Investigating Officer. As a consequence of this condition No.5 on any such intimation, howsoever frivolous it may be, the Investigating Officer would be required to arrest the

applicant. This is a pre-empted and anticipatory exercise of power under Section 439(2) without any hearing being given to the accused and therefore the risk of misuse of this clause highlighted by learned Advocate Mr. Pardiwala calls for a considerate consideration. With howsoever good intention the condition may have been imposed, it violates principles of natural justice. This condition though unwittingly and indirectly, invests the complainant or any other person giving such intimation to Police with powers of cancellation of bail! Such condition may result in negation of bail even after grant of bail by a competent Court. It may lead to unnecessary and unwarranted harassment to accused, multiplicity of work of investigating agency and Court. This condition therefore cannot be permitted to stand.

6. In view of the above discussion, Condition No.5, is modified to read that in the event of any violation of any of the conditions imposed by the Sessions Court while releasing the applicant on bail, if it is intimated to the Investigating Officer, he may approach the Court for issuance of appropriate warrant of arrest.

7. The application is accordingly allowed. Rule is made absolute. Direct service permitted.

(A.L.Dave, J.)

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